

David K. Byers
Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, AZ 85007-3327
Phone: (602) 452-3301
Projects2@courts.az.gov

ARIZONA SUPREME COURT

In the matter of:)	
)	
PETITION TO AMEND RULES 27.1,)	Supreme Court No. 19-_____
27.3, AND 27.4, RULES OF CRIMINAL)	
PROCEDURE)	
_____)	

Pursuant to Rule 28, Rules of the Supreme Court, David K. Byers, Administrative Director of the Administrative Office of the Courts, Arizona Supreme Court, petitions the Court to amend Rules 27.1, 27.3, and 27.4, Arizona Rules of Criminal Procedure. The requested amendments are necessary to establish and clarify requirements for modification of conditions of probation and early termination of probation.

I. Background and Purpose of the Proposed Rule Amendments.

Since January 2011, all fifteen Arizona probation departments are governed by codes developed based on evidence-based practices. A major component of evidence-based practices is that conditions of probation are based on the offender risk/needs assessment. Pursuant to code, adult probation departments provide

supervision of offenders placed on probation, and have current information regarding the risk or benefits of making modifications to probation conditions or terminating probation altogether.

When a judge is considering modifying or terminating probation conditions pursuant to Rule 27.3, Rules of Criminal Procedure and early terminations of probation pursuant to Rule 27.4, it is beneficial to the court, the victim and to community safety that the court receive current information regarding the offender from the probation department prior to making a decision. The following changes are being proposed to ensure the court receives a report and recommendation from the department, especially when a change in conditions or early termination is proposed by someone other than the department.

II. Contents of the Proposed Rules.

Rule 27.1 Conditions and Regulations of Probation

The definitions that existed in Rule 27.3 Modification of Conditions or Regulations have been moved to this Rule due to the use of these terms in other subsections of Rule 27. The definition of “Regulation” has been modified to reflect current practice in the probation field. The phrase “by any other person the court designates” was removed, as we have been unable to determine who, other than the probation officer, would issue a regulation to a probationer.

Rule 27.3 Modification of Conditions or Regulations

The phrase “by any other person the court designates” was removed. The term party agreement was removed and the section where it appeared was reworded. A provision has been added to give notice to the probation department when a modification of probation is sought.

Another addition to the rule is the requirement that the probation department prepare and file an investigation report containing a written recommendation to the court for or against a request to modify. Pursuant to A.R.S. § 36-2604(C)(4), the probation department is permitted access to data of the Pharmacy Board for an open investigation. In cases where illegal drug use has been identified as an issue for the probationer, such reports are helpful in determining the proper disposition of a request to modify probation.

Rule 27.3(d) has been amended to include the requirement that the probation department receive a written copy of any modification or clarification of a condition.

Rule 27.4 Early Termination of Probation

Provisions have been added to the rule to require notice to the State, the probationer, the probation department and a victim who has a right to notice under Rule 27.10 and requiring the judge to consider an investigative report, as described

in Rule 27.3 and Rule 27.4. The word “duration” has been added with the word “term” to clarify the use of the word “term” in this context.

III. Pre-Petition Comments

A draft petition was presented at the Presiding Judges Meeting on December 12, 2018. The comments at that meeting prompted changes in the proposed rules as set forth in the Appendix.

Respectfully submitted this 10th day of January, 2019.

By /S/
David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, Arizona

APPENDIX A

Rule 27.1 Conditions and Regulations of Probation

(a) Definitions.

(1) Condition. “Condition” means any court-ordered term of probation.

(2) Regulation. “Regulation” means any specific instructions or directives given by a probation officer to a probationer to implement a court-imposed condition of probation.

(b) Authority of the Court and the Probation Officer. The sentencing court may impose conditions on a probationer that promote rehabilitation and protect any victim. The probation officer ~~or any other person the court designates~~ also may impose regulations that are necessary to implement the court's conditions and that are consistent with them. The court and probation officer must give the probationer a written copy of the conditions and regulations. Unless there is an intergovernmental agreement to the contrary, references to and notice requirements for probation officers do not apply in limited jurisdiction courts.

Rule 27.3 Modification of Conditions or Regulations

~~(a)~~ **Definitions.**

~~(1) Condition.~~ “Condition” means any court-ordered term of probation.

~~(2) Regulation.~~ “Regulation” means any term imposed by the probation department, or by any other person the court designates to implement a court-imposed condition of probation.

~~(b)~~ **(a) By a Probation Officer.** A probation officer or any other person the court designates may modify or clarify any regulation imposed.

~~(c)~~ **(b) By the Court.**

~~(1) Generally.~~ After giving notice to the State, the probationer, and a victim who has the right to notice under Rule 27.10, the court may modify or clarify any term, condition, or regulation of probation. The court's authority to modify probation must comply with due process, statutory limitations, and party agreement. Any modification of probation must comply with case law and statutes, due process, and statutory limitations. The court may modify or clarify any condition or regulation of probation after:

(A) Giving notice to the State, the probationer, the probation department, and a victim who has the right to notice under Rule 27.10 and

(B) Considering an investigation report, when required by (b)(3) of this rule.

~~(2) Who May Request Modification or Clarification.~~ At any time before the probationer's absolute discharge, a probationer, probation officer, the State, or any other person the court designates, may ask the court to modify or clarify any condition or regulation.

~~(3) Required Investigation Report.~~ Upon any request for modification from supervised to unsupervised probation, the probation department must prepare and file an investigative report describing the probationer's compliance with conditions and regulations and recommending either for or against a request to modify.

~~(34) Restitution.~~ At any time before the probationer's absolute discharge, persons entitled to restitution under a court order may ask the court, based on changed circumstances, to modify or clarify the manner in which restitution is paid.

~~(45) Hearing.~~ The court may hold a hearing on any request for modification or clarification under (c)(2) or (c)(3).

~~(d)~~ **(c) Written Copy and Effect.** The probationer and the probation department must be given a written copy of any modification or clarification of a condition or regulation of probation. A modification of a regulation may go into

effect immediately. An oral modification may not be the sole basis for revoking probation unless the condition or regulation is in writing and both the probationer and the probation department received a copy before the violation.

Rule 27.4 Early Termination of Probation

(a) Discretionary Probation Termination.

(1) Generally. At any time during the term of probation, the court may terminate probation and discharge the probationer as provided by law. ~~The court may take such action on the probationer's motion, the probation officer's motion, or on its own, but only after any required notice to the victim and the State.~~ after:

(A) Giving notice to the State, the probationer, the probation department, and the victim who has the right to notice under Rule 27.10; and

(B) Considering an investigation report.

(2) Who May Request Termination. At any time before the probationer's discharge from probation, the court may terminate probation and discharge the probationer on motion of the probationer, probation department, the state or the court.

(3) Required Investigation Report. Upon any request for termination, the probation department must prepare and file an investigative report describing the probationer's compliance with conditions and regulations and recommending either for or against a request to modify.

(4) Hearing. The court may hold a hearing on any request for early termination.

(b) Earned Time Credit Probation Termination. The court may reduce the term or duration of supervised probation for earned time credit as provided by law.

(c) Written Copy and Effect. The court must provide probationer and the probation department a copy of the order terminating probation and specifying the effective date.